

In re ) Fair Hearing No. 10,665  
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Appeal of )

The petitioner appeals the Department's decision denying her and her young children ANFC benefits based on the Social Security income of the child's older half-brother.

1. The petitioner and her oldest child receive \$388.00 per month each in Social Security Survivor's benefits based on the death of her husband. The petitioner also has a smaller child as the result of a subsequent relationship who has no income of her own.

2. On July 12, 1991 the petitioner applied for ANFC benefits. The Department determined that the maximum benefit which the petitioner could receive based on her family composition of three and shelter expenses was \$628.42 per month. That figure represents a basic needs grant of \$712.00 and the maximum rent figure of \$1,037.00 prorated by 60.6 percent. The Department compared that figure with the \$776.00 in Social Security survivor's benefits received by the petitioner and her son and concluded that the petitioner is over income for any benefits. She has, however, been found eligible for Medicaid and Food Stamps.

3. The petitioner disagrees that the Department should have used her son's Social Security benefits to determine her daughter's eligibility. The petitioner argues that those survivor's benefits were intended for his support only and that she is required to account for the use of those funds yearly to the Social Security Administration. She does not dispute that her own Social Security benefits should be used in the calculation.

ORDER

The Department's decision is affirmed.

REASONS

The Department's regulations which reflect federal law and regulations require the inclusion in the assistance group of virtually all siblings and half-siblings living in the same household:

Assistance Group

An "assistance group" is defined as one or more individuals whose requirements, income and resources are considered as a unit to determine need for ANFC. An ANFC assistance group must include one or more eligible dependent children. In addition, the assistance group must include all siblings (including half-siblings) who live with the dependent child or children, who are also deprived of parental support and who qualify under the ANFC age criteria, as defined in policy. The parent(s) of each and every child included in the ANFC assistance group must also be included in the ANFC assistance group if he or she lives in the home with the children.

W.A.M. § 2242

The regulations specifically include Social Security benefits of assistance group members in determining income available to the unit. W.A.M. § 2252 These two regulations

taken together require the Department to include the Social Security income of all persons in the assistance group when determining a household's eligibility. It must be concluded, therefore, that the Department's decision requiring the petitioner's son to join the assistance group and to count his Social Security income as available to the assistance group, is in accord with its regulations.

The petitioner's argument for excluding her son and his income from the assistance group is a logical and compelling one which has been made before this Board before and which caused the Board to find the regulations based on the so called DEFRA amendments of 1984, 42 U.S.C. § 602(a)(38) violative of the Social Security Act and its purposes. However, that matter has since been put to rest by the U.S., Supreme Court which ruled in favor of the validity of these "sibling-deeming" regulations. Bown v. Gilliard 55 U.S. L.W. 5079 (1987). Although that decision has been much criticized, the Board is bound by it as the supreme law of the land. As such, the Board is constrained to affirm the Department's decision. See 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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